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No. 93-946

Supreme Court, U.S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1993

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WILLIAM T. WULIGER, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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DREW S. DAYS, III
*Solicitor General*
*Department of Justice*
*Washington, D.C. 20530*
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Petitioner challenges a decision of the court of appeals reversing his convictions and remanding the case for a new trial.

1. An indictment was returned in the United States District Court for the Northern District of Ohio charging petitioner, an attorney, with, among other things, multiple violations of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Title III), 18 U.S.C. 2510-2520. The charges were based on petitioner's use in a domestic-relations case of tape recordings that his client had made of telephone conversations between the client's wife and other people. After a jury trial, petitioner was convicted on three counts of violating 18 U.S.C. 2511(1)(d)

by intentionally using the contents of telephone conversations intercepted in violation of Title III. The district court sentenced petitioner to 30 days' home confinement, imposed a term of two years' probation conditioned upon his surrender of his license to practice law, and fined him $5000. Pet. App. A30-A38.

The court of appeals reversed the convictions and remanded for a new trial. Pet. App. A1-A27. It held that the district court committed plain error by failing to instruct the jury that, in order to establish a violation of Section 2511(1)(d), the government was required to prove beyond a reasonable doubt that petitioner knew or had reason to know that his client recorded his wife's telephone conversations without her consent. Pet. App. A5-A10.

2. Petitioner contends (Pet. 4) that "no remand should be necessary because he should have been acquitted of the charged offenses." In support of that contention, he argues (Pet. 18-31) that Section 2511(1)(d) should be construed to exempt from criminal liability lawyers who violate Title III in good faith. He also argues (Pet. 31-51) that the Sixth Circuit's interpretation of Section 2511(1)(d) conflicts with decisions of other circuits and (Pet. 52-62) that, as construed by the Sixth Circuit, Section 2511(1)(d) violates the Due Process Clause and the Tenth Amendment.

Whatever the merits of petitioner's arguments, they are not ripe for review by this Court. The court of appeals reversed petitioner's convictions and remanded for a new trial on the charges on which he was convicted. If petitioner is acquitted on those charges, the arguments advanced in his petition will

be moot. If, on the other hand, he is convicted on the charges and his conviction is affirmed on appeal, he will then be able to present his arguments to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
*Solicitor General*

FEBRUARY 1994

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* Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.